



# Davis Bacon and Related Acts

EPA ARRA Grant Requirements  
November 19, 2009

# Audience: Grantees, State Representatives and Staff

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- This Presentation is intended to help grantees, state representatives, and those agency staff members responsible for American Recovery and Reinvestment Act funded projects which may be subject to federal labor regulations.

# Background

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Section 1606 of the American Recovery and Reinvestment Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of title 40, United States Code.

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Federal agencies providing grants, cooperative agreements, and loans under ARRA shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant construction contracts that are in excess of \$2,000.

# Reorganization Plan Number 14 of 1950 and 40 U.S.C. 3145

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- Federal contracting or assistance-administering agencies have the primary responsibility for the enforcement of DBA.
- DOL has coordination and oversight responsibilities, including the authority to establish regulations and investigate labor standards compliance

# Labor Standards

# Three Key Federal Statutes

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- Davis-Bacon Act/Davis-Bacon Related Acts
- Contract Work Hours and Safety Standards Act
- Copeland Act

# Davis-Bacon Act

(29 CFR parts 1, 3, and 5)

- Originally Enacted 1931, amended 1935 & 1964
- Protects workers from nonlocal contractors underbidding local wage levels
- Applies to Federal construction contracts over \$2,000
- The Act is “site-based”
- Includes alteration, repair, painting & decorating
- Applies to all laborers & mechanics
- Requires payment of prevailing wages
- Requires weekly payment of wages

# Contract Work Hours and Safety Standards Act (CWHSSA)

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- Enacted in 1962
- Provides for overtime for all contract work over 40 hrs/week
- Applies to contracts over \$100,000
- Liquidated damages apply to violations (\$10/day/violation)
- Paid at 1½ times the regular rate of basic pay plus the straight-time rate of fringe benefits
  - Straight time: Straight time: \$20 + \$5
  - Overtime: Overtime: \$30 + \$5

# Copeland Act

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- Enacted in 1934
- Prohibits “kickback” of wages and/or back wages
- Requires contractors on Davis Bacon/Davis Bacon Related Acts covered projects to submit a certified payroll with a signed “statement of compliance” each week

# EPA Applicability

## Davis Bacon Related Acts (DBRA)

# Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees and helpers
- Exemptions:
  - As a general rule, an employee who spends the majority of time in a supervisory position at the job site, and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time.
  - Clerical staff such as timekeepers; professionals such as architects, engineers; and inspectors.
  - Force Account workers, prisoners, volunteers are generally exempt, except when contractor is non governmental

# Site of the Work

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- Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work.”
- Site of work is:
  - The physical place or places where the construction is called for in the contract or will remain after work has been completed; and,
  - Any other site where a significant portion of the building or work is construction, provided that such site is established specifically for the contract.
  - May also include job headquarters, tool yards, batch plants, borrow pits, etc., provided they are:
    - Located adjacent or virtually adjacent to the “site of work” and dedicated exclusively or nearly so to the performance of the contract or project

# DBRA

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- Davis-Bacon requirements extend to numerous “Related Acts” that provide federal assistance by:
  - Grants
  - Loans
  - Loan guarantees
  - Insurance

# DBRA Applicability

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- EPA Programs
  - Diesel Emissions Reduction Act (DERA)
  - Brownfields (BF)
  - Superfund (SF)
  - Leaking Underground Storage Tank (LUST)
  - Clean Water State Revolving Fund (CWSRF)
  - Drinking Water State Revolving Fund (DWSRF)

# CWSRF and DWSRF

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- DBRA applies to all CWSRF and DWSRF construction, alteration, and repair of infrastructure.

# Davis-Bacon Process

# Davis-Bacon Process

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- Planning - Understand the issues and plan to avoid labor problems and budget problems later in the process.
- Preconstruction - Undertake proper steps to make sure labor regulations and procedures are in place to ensure compliance during the construction process.
- Construction Period - Follow through on the procedures to ensure that proper posting, payroll, monitoring and compliance procedures are followed.
- Construction Completion and Post Construction Completion - Gather payroll, certifications, and documentation and records retention requirements.

# Planning Step #1

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- Determine if your project may be subject to Federal Labor Standards, particularly Federal Davis Bacon Wage Scale.
- If any portion of the construction contract is receiving funding subject to Davis-Bacon, the entire contract is subject to Davis-Bacon.
- Refer to the Terms and Conditions of your Grant
- The Davis Bacon Act is “site-based”
- Identify the project State and County

# Planning Step #2

Determine the type of construction (serves as the basis for prevailing wage classification)

- **Residential** -single family houses, townhouses, and apartment buildings up to four stories
- **Building** - sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Also apartment buildings greater than 4 stories, parking garages, service stations, office buildings, fire stations, etc.
- **Highway** - roads, streets, highways, sidewalks, runways, parking areas, and other paving work not incidental to other construction
- **Heavy** - those projects, generally public works, which cannot be classified as Residential, Building, or Highway Construction
  - Often distinguished on the basis of the characteristics of particular projects such as dredging, water and sewer lines, parks and playgrounds, dams, major bridges, and flood control.

# Planning Step #3

- Obtain Wage Determinations: <http://www.wdol.gov> Wage Determinations online
- Davis-Bacon Wage Determinations
  - Established by geographic area (usually a county or a group of counties)
  - Published for the 4 types of construction: Residential, Building, Highway, Heavy (classifications may be combined in many areas)
  - May be modified periodically
  - Must be included in bid documents and contract for construction with appropriate Federal labor standards provisions
- Non-Government recipients/subrecipients must have wage determination concurrence by governmental award official

# Planning Step #4

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- Verify prime contractor and all subcontractor eligibility against GSA Debarment List
- On-line access at: <http://epls.arnet.gov>
- Make record of verification to contract file
- Bid/contract documents (including RFPs) must contain:
  - Applicable Davis-Bacon Wage Determination (WD)
  - Federal labor standards clauses

# Wage Determination

## “Lock-In” Rules

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- Competitive bidding: Modifications published less than 10 days before bid opening may be disregarded if found there is not sufficient time to notify bidders, and a report is made to contract file
- Lock-in at bid opening provided contract is awarded within 90 days
- Must update wage determination if contract award is more than 90 days after bid opening
- Once a Davis-Bacon wage rate has been “locked,” it stays in effect for the duration of the project.

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# Responsibilities and Relationships

# Responsibilities/Relationship

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- An essential part of The Davis-Bacon relationship exists between the local funding agency's local contracting officer and the General Contractor.

# Governmental Recipient's/Subrecipient's Responsibilities

- Obtain Wage Determinations
- Ensure all bid/contract documents contain applicable wage determination and labor provisions (prime and subcontractors)
- Ensure no contracts are awarded to ineligible contractors
- Ensure submission of certified payrolls
- Ensure sole source contracts contain wage determination and labor standards
- Conduct onsite interviews with laborers and mechanics
  - Minimum once within 2 weeks of initial payroll and once within 2 week of final payroll per contractor
- Spot-check payrolls/related records
  - Minimum once within 2 weeks of initial payroll and once within 2 week of final payroll per contractor
- Periodically review use of apprentices and trainees
- Report potential violations to EPA DB contact and DOL Wages and Hours District Office
- Maintain full documentation
- Maintain records 3 years after completion

# Non Governmental Recipient's/Subrecipient's Responsibilities

- Get Approval of Wage Rates from EPA DB contact or Governmental award official prior to RFP
- Ensure bid/contract documents contain applicable wage determination and labor clauses (prime and subcontractors)
- Ensure no contracts are awarded to ineligible contractors
- Ensure submission of certified payrolls
- Ensure sole source contracts contain labor standards
- Conduct onsite interviews with laborers and mechanics
  - Minimum once within 2 weeks of initial payroll and once within 2 week of final payroll per contractor
- Spot-check payrolls/related records
  - Minimum once within 2 weeks of initial payroll and once within 2 week of final payroll per contractor
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- Maintain full documentation
- Maintain records 3 years after completion

# Recipient's/Subrecipient's Responsibilities

- Violations
  - Misclassification of laborers and mechanics.
  - Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
  - Inadequate recordkeeping, such as not counting all hours worked by an individual in two or more classifications during a day.
  - Failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices.
  - Failure to submit certified weekly payrolls.
  - Failure to post the Davis-Bacon poster and applicable wage determination
- All alleged violations should be reported to the EPA DB Coordinator and to DOL

# Prime Contractor's/Subcontractor's Responsibilities

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- Each contract subject to Davis-Bacon must contain labor standards (LS) and the applicable wage determination
- LS describe contractor responsibilities
- LS provide remedies for noncompliance
- These LS are included as part of the Terms and Conditions of the ARRA Grant Award

# Prime Contractor's Responsibilities

- Prepares and submits certified payrolls for its own employees.
- Submits certified payrolls for all subcontractor employees.
- Reviews wage determination and requests additional classifications when needed.
- Provides subcontractors with forms and guidance concerning DB requirements.
- Provides DB Poster and interviewer confidential access to employees on site.
- Instructs lower-tier subcontractors of their responsibilities

# Subcontractor's Responsibilities

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- Prepares & submits certified payrolls each week for its own employees.
- Instructs any lower-tier subcontractors of responsibilities.
- Reviews wage determination and requests additional classifications if needed.
- Provides DB Poster and interviewer confidential access to employees on-site.

# If Federal and State Wage Rates Apply

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- Contract must contain both Federal and State wage decisions/contract standards
- Employers must pay higher of two rates
- Payrolls must carry Federal statement of compliance (reverse of payroll form WH-347)

# Job Site Postings

- Notice to All Employees (WH1321)
- Davis-Bacon wage decision OR Project Wage Rate Sheet
- Protected from elements
- Accessible to all laborers and mechanics
- Easy for contractors and subs to know what rates they must pay
- Easy for laborers and mechanics to see whether they are paid properly
- Easy for the contract administrators reviewing payroll reports
- Should be prepared only after the wage decision has been locked in

## EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

### FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

#### PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

#### OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

#### ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

#### APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

#### PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627



**WWW.WAGEHOUR.DOL.GOV**

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321 (Revised April 2009)



# Job Site Postings

- Davis-Bacon wage decision OR Project Wage Rate Sheet
- Should be prepared only after the wage decision has been locked in

**PROJECT WAGE RATE SHEET**

Project Name: \_\_\_\_\_ Wage Decision: \_\_\_\_\_  
 Project Number: \_\_\_\_\_ County: \_\_\_\_\_

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Laborers – FB:</u>		
Bricklayers	_____	_____	_____	<u>Group</u>	<u>BHR</u>	<u>Total</u>
Carpenters	_____	_____	_____	_____	_____	_____
Cement Masons	_____	_____	_____	_____	_____	_____
Drywall Hangers	_____	_____	_____	_____	_____	_____
Electricians	_____	_____	_____	_____	_____	_____
Iron Workers	_____	_____	_____	_____	_____	_____
Painters	_____	_____	_____	_____	_____	_____
Plumbers	_____	_____	_____	_____	_____	_____
Roofers	_____	_____	_____	_____	_____	_____
Sheet Metal Workers	_____	_____	_____	_____	_____	_____
Soft Floor Layers	_____	_____	_____	_____	_____	_____
Tapers	_____	_____	_____	_____	_____	_____
Tile Setters	_____	_____	_____	_____	_____	_____
<u>OTHERS</u>	_____	_____	_____	<u>Group</u>	<u>BHR</u>	<u>Total</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

**ADDITIONAL CLASSIFICATIONS (HUD 4230-A)**

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Date HUD Approved</u>	<u>Date DOL Confirmed</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

# Certified Payroll Basics

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- Optional form WH 347, Payroll
- Compliance statement (w/original signature of corporate official or designee)
- Payrolls required/week
- Identify first and final payroll
- Prime contractor reviews prior to submission
- Payroll retention = 3 years

PAYROLL

(For Contractor's Optional Use; See Instructions at [www.dol.gov/esa/whd/forms/wh347instr.htm](http://www.dol.gov/esa/whd/forms/wh347instr.htm))

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR	OR SUBCONTRACTOR	ADDRESS	
PAYROLL NO.		FOR WEEK ENDING	PROJECT AND LOCATION
			PROJECT OR CONTRACT NO.

OMB No.: 1215-0149  
Expires: 12/31/2011

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF EXEMPTING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a), The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

(over)

# Interviews – Standard Form 1445



LABOR STANDARDS INTERVIEW							
CONTRACT NUMBER				EMPLOYEE INFORMATION			
NAME OF PRIME CONTRACTOR				LAST NAME	FIRST NAME	MI	
NAME OF EMPLOYER				STREET ADDRESS			
SUPERVISOR'S NAME				CITY	STATE	ZIP CODE	
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION		WAGE RATE		
ACTION						CHECK BELOW	
						YES	NO
Do you work over 8 hours per day?							
Do you work over 40 hours per week?							
Are you paid at least time and a half for overtime hours?							
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?							
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?							
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?				TOOLS YOU USE			
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)							
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)							
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE							
EMPLOYEE'S SIGNATURE						DATE (YYMMDD)	
INTERVIEWER	SIGNATURE			TYPED OR PRINTED NAME		DATE (YYMMDD)	
INTERVIEWER'S COMMENTS							
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED				ACTION (If explanation is needed, use comments section)		YES	NO
				IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?			
				ARE WAGE RATES AND POSTERS DISPLAYED?			
FOR USE BY PAYROLL CHECKER							
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?							
<input type="checkbox"/> YES <input type="checkbox"/> NO							
COMMENTS							
CHECKER							
LAST NAME		FIRST NAME		MI	JOB TITLE		
SIGNATURE						DATE (YYMMDD)	
AUTHORIZED FOR LOCAL REPRODUCTION							
Previous edition not usable							
STANDARD FORM 1445 (REV. 12-95)							
Prescribed by GSA - FAR (48 CFR) 53.222(a)							



# Additional Information

- EPA Grant Award Terms and Conditions [www.epa.gov/ogd/tc.htm](http://www.epa.gov/ogd/tc.htm)
- Dept. of Labor: [www.dol.gov/compliance/laws/comp-dbra.htm](http://www.dol.gov/compliance/laws/comp-dbra.htm)
- Dept. of Labor: [www.wdol.gov](http://www.wdol.gov)
  
- EPA DB Regional Coordinators:
- Region 1 - Ms. Pat Oleary 617-918-1978 [oleary.pat@epa.gov](mailto:oleary.pat@epa.gov)
- Region 2 - Mr. Anthony Tao 212-637-3372 [tao.anthony@epa.gov](mailto:tao.anthony@epa.gov)
- Region 3 – Ms. Lorraine Fleury 215-814-2341 [fleury.lorraine@epa.gov](mailto:fleury.lorraine@epa.gov)
- Region 4 – Ms. Dorothy Rayfield 404-562-9278 [rayfield.dorothy@epa.gov](mailto:rayfield.dorothy@epa.gov)
- Region 5 – Ms. Darlene Hainer 312-886-6017 [hainer.darlene@epa.gov](mailto:hainer.darlene@epa.gov)
- Region 6 - Mary Kemp 214-665-8358 [kemp.mary@epa.gov](mailto:kemp.mary@epa.gov)
- Region 7 – Ms. Lee A. Thomas 913-551-7739 [thomas.leea@epa.gov](mailto:thomas.leea@epa.gov)
- Region 8 – Ms. Joyce Brame 303-312-6367 [brame.joyce@epa.gov](mailto:brame.joyce@epa.gov)
- Region 9 – Mr. Joe Ochab 415-972-3761 [ochab.joe@epa.gov](mailto:ochab.joe@epa.gov)
- Region 10 – Mr. Bob Phillips 206-553-6367 [phillips.bob@epa.gov](mailto:phillips.bob@epa.gov)
- Headquarters Mr. Sam Peterson 202-564-5393 [peterson.samuel@epa.gov](mailto:peterson.samuel@epa.gov)



# Additional Resources

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- 1) DOL Davis Bacon Fact Sheet >>  
<http://www.dol.gov/esa/whd/regs/compliance/whdfs66.pdf>
- 2) General Davis Bacon Act requirements and applicability >  
[Compliance Assistance By Law - The Davis-Bacon and Related Acts \(DBRA\)](#)
- 3) Wage determinations on line > <http://www.wdol.gov/>
- 4) selecting the appropriate construction type (see section 4b)  
<http://www.wdol.gov/usrguide/sectionc.aspx#c4b>  
<http://www.dol.gov/esa/whd/programs/dbra/docs/memo-131.pdf>
- 5) selecting a wage determination > <http://www.wdol.gov/dba.aspx#0>
- 6) wage rate posting requirements >  
<http://www.dol.gov/esa/whd/programs/dbra/wh1321.htm>

# Additional Resources

7) performing a review of certified payrolls >

<http://www.dol.gov/esa/whd/forms/wh347.pdf>

8) conducting labor interviews

[http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/\\$file/sf1445.pdf](http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/$file/sf1445.pdf)

9) recommendations for resolving wage rate violations.

DOL employment law guide > <http://www.dol.gov/compliance/guide/dbra.htm>

10) Davis Bacon Reference Material >

<http://www.gpo.gov/davisbacon/referencemat.html>

11) Prevailing Wage Resource Book >

<http://www.dol.gov/esa/whd/recovery/pwrp/toc.htm>

12) DOL wage and hour division offices > [U.S. Department of Labor — Employment Standards](#)

[Administration \(ESA\) — Wage and Hour Division \(WHD\) — District Office Locations](#)

13) DOL wage and Hour Division ARRA website >

<http://www.dol.gov/esa/whd/recovery/>